

REPRESENTATIVES FOR PETITIONER:

Robert C. Brown, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Kristie L. Dressel, Center Township Assessor

Robert W. Metz, Commercial Supervisor, Center Township

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Robert C. Brown Trust,	)	Petition Nos.: 45-032-03-1-5-00014
	)	45-032-03-1-5-00015
Petitioner,	)	
	)	
v.	)	Parcels: 003-31-25-0088-0012
	)	003-31-25-0087-0042
	)	
Center Township Assessor,	)	
	)	County: Lake
Respondent.	)	Township: Center
	)	
	)	Assessment Year: 2003

Appeal from the Final Determination of  
Lake County Property Tax Assessment Board of Appeals

**March 19, 2009**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence,  
and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. The issue presented for consideration by the Board was whether the assessed values of the properties under appeal are in excess of their market values.

### **PROCEDURAL HISTORY**

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations upholding the Center Township Assessor's 2003 assessment of the subject property on March 8, 2007.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on April 5, 2007, petitioning the Board to conduct an administrative review of the subject property's 2003 assessment.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on January 13, 2009, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Robert C. Brown, taxpayer's representative  
Carol Brown, witness for the taxpayer

For the Respondent:

Kristie L. Dressel, Center Township Assessor  
Robert W. Metz, Commercial Supervisor, Center Township.

6. The Petitioner presented the following exhibits:

Petitioner Exhibits 1-6 – Photographs of the subject parcels.

7. The Respondent did not present any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 Petitions,  
Board Exhibit B – Notices of Hearing dated November 7, 2008,  
Board Exhibit C – Sign-in Sheet.

9. The properties under appeal are Parcel No. 003-31-25-0088-0012 (Parcel 12), which is an improved residential parcel located at 7302 West 128<sup>th</sup> Place, Cedar Lake, and Parcel No. 003-31-25-0087-0042 (Parcel 42), a vacant residential lot located across the street at 7307 West 128<sup>th</sup> Lane, Cedar Lake.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2003, the PTABOA determined the assessed value of Parcel 12 to be \$7,400 for the land and \$11,500 for the improvements, for a total assessed value of \$18,900; and \$6,300 for the land for Parcel 42.<sup>1</sup>
12. The Petitioner's representative testified that he agreed with the improvement assessment on Parcel 12. The Petitioner did not request any specific assessed values for the land.

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<sup>1</sup> The record is not clear on the assessed value of the parcels. The Form 115 did not have any assessed values recorded. *Board Exhibit A*. A spreadsheet purportedly attached to the 115 identified the subject parcels and listed a value for Parcel 12. Parcel 42 was identified only with the amount of the 04/05 tax and a hand written note purporting to be the assessed value.

## JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

## PARTIES' CONTENTIONS

17. The Petitioner contends the assessed value of the land is excessive and presented the following evidence in support of its contentions:
  - A. The Petitioner's representative testified that the Petitioner is not contesting the assessed value of the dwelling but contends the assessment of the vacant lot is excessive. *R. Brown testimony*. According to the Petitioner, the lot is only 25' wide and is used only for parking and for a garden. *Id.* In support of this contention, the Petitioner submitted a photograph of the vacant lot. *Petitioner Exhibit 2*.
  - B. The Petitioner further contends the taxes of \$200 on the vacant lot are excessive because the lot is only used for parking. *R. Brown testimony*.
18. The Respondent contends the property is correctly assessed.

## ANALYSIS

19. The 2002 Real Property Assessment Manual defines "true tax value" as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

20. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
21. Here, the Petitioner did not present any market-based evidence of the type recognized by the Manual to demonstrate that the subject property is assessed in excess of its true tax value. Instead the Petitioner merely contends that the assessment is too high because it is only used for a parking lot and small garden. In support of this contention, the Petitioner presented a photograph of the Parcel 42. *Petitioner Exhibit 2*. The picture shows a truck parked on a vacant lot, but does not provide any evidence of the value of that parcel. Further, Mr. Brown's contention that the assessment is "too high" was unsupported by any evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
22. The Petitioner also contends that the assessed value of the land is excessive because the taxes are too high for a parcel that is used only for parking. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 716 N.E.2d 904,908 (Ind. Tax Ct. 2001), citing *Matanovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Board of*

*Tax Commissioners*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over matters involving local tax rates.

23. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

24. The Petitioner failed to establish a prima facie case of error. The Board finds for the Respondent. No change in the assessment is warranted.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>